


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2009 SEP 10 PM 4:04

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 
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Mission Pharmacal Company,

Plaintiff,

v.

Midlothian Laboratories LLC,

Defendant.

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Civil Action No.

SA09CA0744 XR

COMPLAINT

Mission Pharmacal Company ("Plaintiff" or "Mission"), by and through its undersigned attorneys, brings this lawsuit against defendant Midlothian Laboratories LLC ("Defendant" or "Midlothian") and alleges as follows:

PARTIES

1. Plaintiff Mission is a Texas corporation with its principal place of business in San Antonio, Texas.

2. Upon information and belief, Defendant Midlothian is a limited liability corporation formed under the laws of Alabama and maintains its headquarters and principal place of business at 5331 Perimeter Parkway Ct., Montgomery AL 36116-5125.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Midlothian by virtue of the fact that Midlothian conducts business in the State of Texas, has availed itself of the rights and benefits of

Texas law, has engaged in substantial and continuing contacts with the State, and Mission's patent rights in Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391 (b) and (c) and 1400(b).

COUNT I

6. Mission is the owner as assignee of United States Patent No. 6,521,247 ("the '247 patent"). The '247 patent lawfully issued on February 18, 2003. A copy of the '247 patent is attached as Exhibit A.

7. The '247 patent claims, among other things, a nutritional supplement containing two different iron compounds, a method of alleviating iron deficiency, and a method of making a nutritional supplement.

8. Upon information and belief, Midlothian manufactures, imports, sells, and offers to sell certain prenatal supplements, including, the Foltabs prenatal supplement and the Foltabs DHA prenatal supplement, in this jurisdiction and elsewhere in the United States in competition with Mission.

9. Upon information and belief, Midlothian's Foltabs prenatal supplement and Foltabs DHA prenatal supplement are covered by the '247 patent.

10. Upon information and belief, Midlothian has and will continue to directly infringe, and induce others to infringe, the '247 patent by reason of Midlothian's manufacture, sale and/or offer for sale of nutritional supplements, including Foltabs prenatal supplement and Foltabs DHA prenatal supplement.

11. Mission has been damaged by Midlothian's infringement of the '247 patent, and its continued sales of Foltabs and Foltabs DHA prenatal supplements has caused monetary

damages, including but not limited to lost profits. The injury Mission is continuing and irreparable unless enjoined by this Court.

12. Upon information and belief, Defendant was aware of the existence of the '247 patent.

13. Upon information and belief, Defendant has not stopped the commercial manufacture or sale of Foltabs and Foltabs DHA prenatal supplements.

14. Upon information and belief, Defendant has infringed the '247 despite an objectively high likelihood that its actions constituted infringement of a valid patent.

15. Upon information and belief, Defendant's infringement of the '247 patent was and is willful.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court enter a Judgment that:

- a. Midlothian has infringed the '247 patent;
- b. Midlothian has induced others to infringe the '247 patent;
- c. Midlothian's infringement of the '247 patent is willful;
- d. Midlothian, their officers, agents, attorneys, licensees, employees, its successors in interest and assigns, and all others acting in privity or concert with them, are permanently enjoined from engaging in the commercial manufacture, use, offer for sale, or sale of prenatal supplements as claimed by the '247 patent, and all other acts of infringement of the '247 patent, prior to the expiration of that patent;
- e. An accounting be had for the damages resulting from Midlothian's infringement of the '247 patent, including, without limitation, lost profits, caused by the infringing

activities of Midlothian, and that the damages so ascertained be trebled and awarded together with interest and costs;

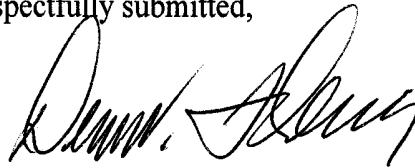
- f. Pursuant to 35 U.S.C. § 285, Mission be awarded its reasonable attorneys' fees; and
- g. Plaintiffs shall be accorded such other and further relief as the Court may deem appropriate under the circumstances.

JURY DEMAND

Plaintiffs demand trial by jury.

Dated: September 10, 2009

Respectfully submitted,



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